

CRIMINAL CODE

CHAPTER 104

HOUSE BILL NO. 1181

(Representatives Skroch, Klemin, Vetter)
(Senators Burckhard, Clemens)

AN ACT to to create and enact section 12.1-04-04.1 of the North Dakota Century Code, relating to a defendant's fitness to proceed; and to amend and reenact sections 12.1-04-04, 12.1-04-06, 12.1-04-07, and 12.1-04-08 of the North Dakota Century Code, relating to a defendant's fitness to proceed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04-04. Disposition of mentally unfit defendantsDefinitions.

~~No person who, as a result of mental disease or defect, lacks capacity to understand the proceedings against the person or to assist in the person's own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity enduresAs used in this chapter, unless the context otherwise requires:~~

1. "Fitness to proceed" means sufficient present ability to consult with the individual's counsel with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against the individual.
2. "Least restrictive appropriate setting" means available treatment or service that best meets the identified need and is no more restrictive of physical or social liberties than what is necessary to meet the need.
3. "Therapeutically appropriate treatment" means treatment that provides the individual the greatest probability of improvement or cure.

SECTION 2. Section 12.1-04-04.1 of the North Dakota Century Code is created and enacted as follows:

12.1-04-04.1. Disposition of defendants - Lack of fitness to proceed - Records.

1. A defendant is presumed to be fit to stand trial, to plead, or to be sentenced.
2. An individual who lacks fitness to proceed may not be tried, convicted, or sentenced for the commission of an offense.

3. Any report filed pursuant to this chapter regarding "diagnosis, treatment, or treatment plans" must be kept confidential and may be reviewed only by the court or an appellate court, the state, the defense, the facility providing treatment as required by order of the court, and any other person as directed by the court.

SECTION 3. AMENDMENT. Section 12.1-04-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04-06. Examination – Temporary commitment/detention for purposes of examination.

Whenever there is reason to doubt the defendant's fitness to proceed, the court may order ~~the temporary~~ detention of the defendant for the purpose of an examination by a tier 1a mental health professional. The temporary detention must be in the least restrictive appropriate setting, including the state hospital, the life skills and transition center, or other suitable facility for a reasonable period, not to exceed thirty days, for such examination. In lieu of detention, the court may allow the defendant to remain in the defendant's present residential setting or other suitable residential setting for the purpose of evaluation by a suitable facility or personnel examination, subject to any reasonable limitation the court may impose. A human service center may ~~not~~ be considered a suitable facility and may ~~not be considered suitable personnel under this section unless~~ if the court is aware an inquiry was made before the court ordered the evaluation to ensure appropriate resources exist at the human service center being ordered to conduct the evaluation/examination. ~~The court, by subsequent order and for good cause shown, may extend the detention for a period not to exceed thirty additional days.~~ While the defendant is detained, the defendant's legal counsel, family, and others necessary to assist in the defendant's case must have reasonable opportunity to examine and confer with the defendant.

SECTION 4. AMENDMENT. Section 12.1-04-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04-07. Examination - Report - Hearing when contested.

1. The report of the examining psychiatrists or psychologists must be given in writing to the court within three days of expiration of the period of commitment or, if the defendant is not committed, within thirty days after the outpatient evaluation. The court shall cause copies to be delivered to the prosecutor and counsel for the defendant. Whenever there is reason to doubt the defendant's fitness to proceed, the court shall order the defendant be examined by a tier 1a mental health professional.
2. An examination must occur within fifteen days from notice of entry of the order served upon the tier 1a mental health professional. Attorneys shall disclose any materials necessary to examine the fitness of the individual to the tier 1a examiner contemporaneously with the order. For good cause shown, the court may grant an extension allowing an additional seven days to complete the examination.
3. The report of the examining mental health professional, whether for a retrospective evaluation of fitness or an evaluation of the defendant's current fitness, must be provided to the court in writing within thirty days of the date of the examination.
4. The report must include:

- a. The identity of the individuals interviewed and records and other information considered.
 - b. Procedures, tests, and techniques utilized in the assessment.
 - c. The date and time of the examination of the defendant, and the identity of each individual present during the examination.
 - d. The relevant information obtained, other information not obtained, and the defendant's responses to questions related to the defendant's fitness to proceed, except for any restricted, proprietary, copyrighted, or other information subject to trade secret protection which the examiner believes may be relevant, and the findings made.
 - e. An opinion as to whether the defendant is fit to proceed ~~or, is unable to understand the nature or purpose of the proceedings against the defendant, is able to effectively communicate with counsel, and whether the defendant will attain fitness to proceed or ability to effectively communicate with counsel in the foreseeable future.~~
- 3- within the time frames set forth in section 12.1-04-08. If the examiner is unable to determine whether the defendant will attain fitness within a specified period of time, the report must include the reasoning. The report may include a general description of the type of treatment needed and of the therapeutically appropriate treatment or other appropriate treatment.
5. If the findings of the report are contested, the court shall hold a hearing prior to before deciding whether the defendant currently lacks fitness to proceed or currently lacks ability to effectively communicate with counsel and whether the defendant will attain fitness to proceed or ability to effectively communicate with counsel in the foreseeable future. Upon hearing, the prosecution and defense have the right to summon and cross-examine the persons responsible for the report and to offer evidence upon the issues.

SECTION 5. AMENDMENT. Section 12.1-04-08 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04-08. Suspension or dismissal of proceedings - Referral for services.

1. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed ~~or to effectively communicate with counsel~~ but that the defendant may attain fitness to proceed ~~or effectively communicate with counsel in the foreseeable future,~~ and the report as required under section 12.1-04-07 indicates a likelihood the defendant will attain fitness within a specified period of time from the date of the finding upon completion of a course of therapeutically appropriate treatment, the proceedings against the defendant must be suspended, ~~except as provided in section 12.1-04-09. For a defendant charged with a felony, the proceedings must be suspended for a period of up to one hundred eighty days. The court may extend the suspension for an additional three hundred sixty-five days if there is medical evidence to believe the defendant's fitness to proceed will be restored during the extended period. For a defendant charged with a misdemeanor, the proceedings must be suspended for a period no longer than the maximum term of imprisonment for the most serious offense charged. When the court determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed or to effectively communicate with counsel, the~~

proceeding must be resumed. If prosecution of the defendant has not resumed prior to the expiration of the maximum period for which the defendant could be sentenced; or it is determined by the court, after a hearing if a hearing is requested, that the defendant will not regain fitness to proceed or to effectively communicate with counsel within the allotted time, the charges against the defendant must be dismissed. The court may at any time make a referral for other appropriate services, treatment, or civil commitment.

2. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed and that the defendant will not attain fitness to proceed in the foreseeable future, the proceedings must be dismissed. The court may at any time make a referral for other appropriate services, treatment, or civil commitment.
3. Other appropriate services or treatment include:
 - a. Determination of incapacity, by a district court with appropriate jurisdiction following petition by the state's attorney, for the appointment of a guardian or conservator pursuant to chapter 30.1-28 or 30.1-29; or
 - b. Civil commitment of the person pursuant to chapter 25-03.1; or
 - e. Treatment of the person by a human service center or other appropriate public or private provider.
3. If the court determines the defendant currently lacks fitness to proceed and the defendant may attain fitness to proceed under subsection 1, the court may enter an order for a course of treatment considering the least restrictive form of treatment therapeutically appropriate.
 - a. Unless excused by the court, in a proceeding to determine therapy in an attempt to attain fitness, the defendant shall be represented by trial counsel.
 - b. If the court finds the individual is not able to retain the services of a tier 1a mental health professional and that those services are not otherwise available, the court shall authorize reasonable expenditures from public funds to examine the individual.
 - c. In a motion hearing to resume prosecution, the state or prosecuting authority must show by a preponderance of the evidence the defendant has attained fitness to proceed.
4. If the court orders the defendant committed to a treatment facility in an attempt to attain fitness to proceed under subsection 1, the court shall provide the special custody and commitment terms in the order. The special terms of commitment must include an order for the defendant to accept all nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility, including the use of involuntary treatment with prescribed medication without the need for a separate commitment under chapter 25-03.1.
 - a. If the order does not indicate the terms of commitment, the director or superintendent of the treatment facility may determine the nature of the

constraints necessary within the treatment facility to carry out the order of the court.

- b. If the court orders an individual committed for therapeutic treatment to attain fitness to proceed, the court shall set a date consistent with the timeline established in this section for a review of the defendant's fitness to proceed. At least sixty days before the date specified for review, the director or director's designee or the superintendent of the treatment facility shall inquire as to whether the individual is represented by counsel and file a written report of the facts ascertained with the court.
5. If the parties to the action have reason to modify the special terms of the commitment order under this section, the parties shall make a motion to the court and the court shall determine by a preponderance of the evidence if the modification of the special terms is necessary and the least restrictive therapeutic alternative therapy in an attempt to attain fitness to proceed.
6. The custodian, guardian, or other person charged with the control of the defendant may take an appeal from the court's order in the manner provided by law. ~~The procedure provided in this section is not exclusive, but is in addition to any other procedure for the commitment of individuals to the life-skills and transition center, state hospital, or other state facility.~~

Approved April 21, 2021

Filed April 22, 2021

CHAPTER 105

SENATE BILL NO. 2116

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

AN ACT to create and enact a new subsection to section 12.1-05-02 of the North Dakota Century Code, relating to the use of deadly force when protecting nuclear assets; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-05-02 of the North Dakota Century Code is created and enacted as follows:

A member of the armed forces is justified in using deadly force when it reasonably appears to be necessary to prevent the loss, theft, destruction, sabotage, or unauthorized control of a nuclear weapon, critical nuclear component, or nuclear explosive device.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 23, 2021

Filed March 24, 2021

CHAPTER 106

HOUSE BILL NO. 1498

(Representatives B. Koppelman, K. Koppelman, Marschall, Paulson, D. Ruby)
(Senators Clemens, Kannianen, Lemm, Myrdal, Vedaa)

AN ACT to create and enact a new section to chapter 62.1-02 of the North Dakota Century Code, relating to brandishing a dangerous weapon; and to amend and reenact sections 12.1-05-06, 12.1-05-07, and 12.1-05-07.2 of the North Dakota Century Code, relating to use of force in defense of property, limits on the use of force and deadly force, and immunity from civil liability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-05-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-05-06. Use of force in defense of premises and property.

Force is justified if it is used to prevent or terminate an unlawful entry or other trespass in or upon premises, or to prevent an unlawful carrying away or damaging of property, ~~if the person using such force first requests the person against whom such force is to be used to desist from his interference with the premises or property, except that a request is not necessary if it would be useless or dangerous to make the request or substantial damage would be done to the property sought to be protected before the request could effectively be made.~~

SECTION 2. AMENDMENT. Section 12.1-05-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-05-07. Limits on the use of force - Excessive force - Deadly force.

1. An individual is not justified in using more force than is necessary and appropriate under the circumstances.
2. Deadly force is justified in the following instances:
 - a. When it is expressly authorized by law or occurs in the lawful conduct of war.
 - b. When used in lawful self-defense, or in lawful defense of others, if such force is necessary to protect the actor or anyone else against death, serious bodily injury, or the commission of a felony involving violence. The use of deadly force is not justified if it can be avoided, with safety to the actor and others, by retreat or other conduct involving minimal interference with the freedom of the individual menaced. An individual seeking to protect another individual must, before using deadly force, try to cause the other individual to retreat, or otherwise comply with the requirements of this provision, if safety can be obtained thereby. However, the duty to retreat or avoid force does not apply under the following circumstances:

- (1) A public servant justified in using force in the performance of the public servant's duties or an individual justified in using force in assisting the public servant need not desist from the public servant's or individual's efforts because of resistance or threatened resistance by or on behalf of the other individual against whom the public servant's or individual's action is directed; and
 - (2) An individual who is not engaged in an unlawful activity that gives rise to the need for the use of deadly force and has not provoked the individual against whom the deadly force is used, unless the circumstances in subdivision b of subsection 2 of section 12.1-05-03 apply. is not required to retreat within or from that individual's dwelling or place of work or from an occupied motor home or travel trailer as defined in section 39-01-01, unless the individual was the original aggressor or is assailed by another individual who the individual knows also dwells or works there or who is lawfully in the motor home or travel trailer any place the individual otherwise is legally allowed to be.
- c. When used by an individual in possession or control of a dwelling, place of work, motor vehicle, or an occupied motor home or travel trailer as defined in section 39-01-01, or by an individual who is licensed or privileged to be there, if the force is necessary to prevent commission of arson, burglary, robbery, or a felony involving violence upon or in the dwelling, place of work, motor vehicle, or occupied motor home or travel trailer, and the use of force other than deadly force for these purposes would expose any individual to substantial danger of serious bodily injury.
 - d. When used by a public servant authorized to effect arrests or prevent escapes, if the force is necessary to effect an arrest or to prevent the escape from custody of an individual who has committed or attempted to commit a felony involving violence, or is attempting to escape by the use of a deadly weapon, or has otherwise indicated that the individual is likely to endanger human life or to inflict serious bodily injury unless apprehended without delay.
 - e. When used by a guard or other public servant, if the force is necessary to prevent the escape of a prisoner from a detention facility, unless the guard or public servant knows that the prisoner is not an individual as described in subdivision d. A detention facility is any place used for the confinement, pursuant to a court order, of an individual charged with or convicted of an offense, charged with being or adjudicated a juvenile delinquent, held for extradition, or otherwise confined under court order.
 - f. When used by a duly licensed physician, or an individual acting at the physician's direction, if the force is necessary to administer a recognized form of treatment to promote the physical or mental health of a patient and if the treatment is administered in an emergency; with the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of the patient's parent, guardian, or other person entrusted with the patient's care and supervision; or by order of a court of competent jurisdiction.
 - g. When used by an individual who is directed or authorized by a public servant, and who does not know that the public servant is not authorized to use deadly force under the circumstances.

SECTION 3. AMENDMENT. Section 12.1-05-07.2 of the North Dakota Century Code is amended and reenacted as follows:

12.1-05-07.2. Immunity from civil liability for justifiable use of force.

1. An individual who uses force as permitted under this chapter is immune from civil liability for the use of the force to the individual against whom force was used or to that individual's estate unless that individual is a law enforcement officer who was acting in the performance of official duties and the officer provided identification, if required, in accordance with any applicable law or warrant from a court, or if the individual using force knew or reasonably should have known that the individual was a law enforcement officer.
2. The court shall award loss of income, reasonable attorney's fees and court costs, and disbursements incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from civil liability as provided in subsection 1.

SECTION 4. A new section to chapter 62.1-02 of the North Dakota Century Code is created and enacted as follows:

Brandishing a dangerous weapon.

Unless otherwise provided by law and subject to sections 12.1-17-04, 12.1-17-05, and 12.1-31-01, an individual may brandish a dangerous weapon while on property owned or leased by the individual.

Approved April 19, 2021

Filed April 20, 2021

CHAPTER 107

SENATE BILL NO. 2166

(Senators Vedaa, Hogue, O. Larsen, Larson)
(Representatives D. Anderson, Thomas)

AN ACT to amend and reenact sections 12.1-23-05 and 12.1-23-10 of the North Dakota Century Code, relating to theft offenses; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-23-05 of the North Dakota Century Code is amended and reenacted as follows:

12.1-23-05. Grading of theft offenses.

1. Notwithstanding subsection 3, theft under this chapter is a class A felony if the property or services stolen exceed fifty thousand dollars in value.
2. Notwithstanding the provisions of subsection 3, theft under this chapter is a class B felony if the property or services stolen exceed ten thousand dollars in value but do not exceed fifty thousand dollars or are acquired or retained by a threat to commit a felony.
3. Theft under this chapter is a class C felony if:
 - a. The property or services stolen exceed one thousand dollars in value;
 - b. The property or services stolen are acquired or retained by threat and (1) are acquired or retained by a public servant by a threat to take or withhold official action, or (2) exceed one hundred dollars in value;
 - c. The property or services stolen exceed one hundred dollars in value and are acquired or retained by a public servant in the course of official duties;
 - d. The property stolen is a firearm, ammunition, or an explosive or destructive device;
 - e. The property consists of any government file, record, document, or other government paper stolen from any government office or from any public servant;
 - f. The defendant is in the business of buying or selling stolen property and the defendant receives, retains, or disposes of the property in the course of that business;
 - g. The property stolen consists of any implement, paper, or other thing uniquely associated with the preparation of any money, stamp, bond, or other document, instrument, or obligation of this state;

- h. The property stolen consists of livestock taken from the premises of the owner;
 - i. The property stolen consists of a key or other implement uniquely suited to provide access to property the theft of which would be a felony and it was stolen to gain such access;
 - j. The property stolen is a card, plate, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit, or is a debit card, electronic fund transfer card, code, or other means of access to an account for the purposes of initiating electronic fund transfers; or
 - k. The property stolen is a prescription drug as defined in section 43-15.3-01, except when the quantity stolen is five or fewer capsules, pills, or tablets.
4. All other theft under this chapter is a class A misdemeanor, unless the requirements of subsection 5 are met.
5. a. Theft under this chapter of property or services of a value not exceeding five hundred dollars is a class B misdemeanor for a first offense if:
- a- (1) The theft was committed by shoplifting; or
 - (2) The following three factors are met:
 - (a) The theft was not committed by threat;
 - b-(b) The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft; and
 - e-(c) The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of official duties.
- b. The special classification provided in this subsection paragraph 2 of subdivision a applies if the offense is classified under this subsection in the charge or if, at sentencing, the required factors are established by a preponderance of the evidence.
- c. A second or third offense under paragraph 1 of subdivision a occurring within three years is a class A misdemeanor. A fourth or subsequent violation under paragraph 1 of subdivision a occurring within four years is a class C felony.
- d. A sentence imposed under this subsection must be accompanied by a written statement by the court providing notice of any offense under this section which provides an enhanced penalty, including the penalty for a subsequent offense.
6. Notwithstanding subsection 3 of section 12.1-06-01, an attempt to commit a theft under this chapter is punishable equally with the completed offense when the actor has completed all of the conduct which the actor believes necessary on the actor's part to complete the theft except receipt of the property.

7. For purposes of grading, the amount involved in a theft under this chapter is the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that the actor was stealing, or which the actor could reasonably have anticipated to have been the property or services involved. Thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be charged as one offense and the amounts proved to have been stolen may be aggregated in determining the grade of the offense.

SECTION 2. AMENDMENT. Section 12.1-23-10 of the North Dakota Century Code is amended and reenacted as follows:

12.1-23-10. Definitions for theft and related offenses.

In this chapter:

1. "Dealer in property" means a person who buys or sells property as a business.
2. "Deception" means:
 - a. Creating or reinforcing a false impression as to fact, law, status, value, intention, or other state of mind; or obtaining or attempting to obtain public assistance by concealing a material fact, making a false statement or representation, impersonating another, concealing the transfer of property without adequate consideration, or using any other fraudulent method; but deception as to a person's intention to perform a promise may not be inferred from the fact alone that the person did not substantially perform the promise unless it is part of a continuing scheme to defraud;
 - b. Preventing another from acquiring information which would affect his judgment of a transaction;
 - c. Failing to correct a false impression which the actor previously created or reinforced, or which he knows to be influencing another to whom he stands in a fiduciary or confidential relationship;
 - d. Failing to correct an impression which the actor previously created or reinforced and which the actor knows to have become false due to subsequent events;
 - e. Failing to disclose a lien, adverse claim, or other impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained or in order to continue to deprive another of his property, whether such impediment is or is not valid, or is or is not a matter of official record;
 - f. Using a credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (1) where such instrument has been stolen, forged, revoked, or canceled, or where for any other reason its use by the actor is unauthorized, and (2) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or

9. "Receiving" means acquiring possession, control, or title, or lending on the security of the property.
 10. "Services" means labor, professional service, transportation, telephone, mail or other public service, gas, electricity and other public utility services, accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other property.
 11. "Shoplifting" means to willfully take possession of any merchandise owned, held, offered, or displayed for sale, by a merchant, store, or other mercantile establishment, with the intent to deprive the owner of the merchandise. The term includes:
 - a. Removing merchandise from a store or other mercantile establishment without paying for the merchandise;
 - b. Concealing a nonpurchased good or merchandise;
 - c. Altering, transferring, or removing a price marking on a good or merchandise;
 - d. Transferring a good from one container to another; and
 - e. Causing the amount paid for a good or merchandise to be less than the stated retail price.
 12. "Stolen" means property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of section 12.1-23-06.
- 42-13. "Threat" means an expressed purpose, however communicated, to:
- a. Cause bodily injury in the future to the person threatened or to any other person;
 - b. Cause damage to property;
 - c. Subject the person threatened or any other person to physical confinement or restraint;
 - d. Engage in other conduct constituting a crime;
 - e. Accuse anyone of a crime;
 - f. Expose a secret or publicize an asserted fact, whether true or false, tending to subject a person living or deceased, to hatred, contempt, or ridicule or to impair another's credit or business repute;
 - g. Reveal any information sought to be concealed by the person threatened;
 - h. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
 - i. Take or withhold official action as a public servant, or cause a public servant to take or withhold official action;

- j. Bring about or continue a strike, boycott, or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent;
- k. Cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or
- l. Do any other act which would not in itself substantially benefit the actor or a group he represents but which is calculated to harm another person in a substantial manner with respect to his health, safety, business, employment, calling, career, financial condition, reputation, or personal relationship.

Upon a charge of theft, the receipt of property in consideration for taking or withholding official action shall be deemed to be theft by threat regardless of whether the owner voluntarily parted with his property or himself initiated the scheme.

~~13-14.~~ "Traffic" means:

- a. To sell, transfer, distribute, dispense, or otherwise dispose of to another person; or
- b. To buy, receive, possess, or obtain control of, with intent to sell, transfer, distribute, dispense, or otherwise dispose of to another person.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 16, 2021

Filed April 16, 2021

CHAPTER 108

SENATE BILL NO. 2156

(Senators Dwyer, Bell)

(Representatives Hanson, Headland, Heinert, K. Koppelman)

AN ACT to amend and reenact sections 12.1-31-03, 12.1-31-03.1, 12.1-31-03.3, and 51-32-01 of the North Dakota Century Code, relating to the prohibition of an individual under twenty-one years of age from purchasing, possessing, or using tobacco products or electronic smoking devices; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-03. Sale of tobacco, electronic smoking devices, or alternative nicotine products to minorsan individual under twenty-one years of age and use by minorsan individual under twenty-one years of age prohibited.

1. a. It is an infraction for any person to sell or furnish to a minoran individual under twenty-one years of age, or procure for a minoran individual under twenty-one years of age, cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. As used in this subdivision, "sell" includes dispensing from a vending machine under the control of the actor.
 - b. It is an infraction for any person to display or offer for sale cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a self-service display. This subdivision does not apply to a:
 - (1) Vending machine or other coin-operated machine that is permitted under section 12.1-31-03.1; or
 - (2) Self-service display that is located in a tobacco specialty store.
2. It is a noncriminal offense for a minoran individual under twenty-one years of age to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. However, an individual under ~~eighteen~~twenty-one years of age may purchase and possess tobacco, electronic smoking devices, or alternative nicotine products as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco, electronic smoking devices, or alternative nicotine products retailer, or association of tobacco, electronic smoking devices, or

alternative nicotine products retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.

3. Subsections 1 and 2 do not apply to an individual under twenty-one years of age who possesses cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be used for smoking or chewing, electronic smoking devices, or alternative nicotine products when required in the performance of the individual's duties as an employee.
4. It is a noncriminal offense for ~~a minor~~ an individual under twenty-one years of age to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually ~~the minor's~~ that individual's own proof of age, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products.
- 4-5. A city or county may adopt an ordinance or resolution regarding the sale of tobacco, electronic smoking devices, or alternative nicotine products to ~~minors~~ individuals under twenty-one years of age and use of tobacco, electronic smoking devices, or alternative nicotine products by ~~minors~~ individuals under twenty-one years of age which includes prohibitions in addition to those in subsection 1, 2, or ~~34~~. Any ordinance or resolution adopted must include provisions deeming a violation of subsection 2 or ~~34~~ a noncriminal violation and must provide for a fee of not less than twenty-five dollars for ~~a minor~~ an individual fourteen years of age or older who has been charged with an offense under subsection 2 or ~~34~~. The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance or resolution is punishable as a contempt of court, except ~~a minor~~ an individual under twenty-one years of age may not be imprisoned for the contempt.
- 5-6. ~~A minor~~ An individual fourteen years of age or older found to have violated subsection 2 or ~~34~~ must pay a fee of twenty-five dollars.
 - a. Any individual who has been cited for a violation of subsection 2 or ~~34~~ may appear before a court of competent jurisdiction and pay the fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the fee. This subdivision does not allow a citing officer to receive the fee or bond.
 - b. If an individual cited for a violation of subsection 2 or ~~34~~ does not choose to follow the procedures provided under subdivision a, that individual may request a hearing on the issue of the commission of the violation cited. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the

violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.

- c. The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except ~~a minor~~ an individual may not be imprisoned for the contempt.

6-7. The prosecution must prove the commission of a cited violation under subsection 2 or ~~34~~ by a preponderance of the evidence.

7-8. A law enforcement officer that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten days of the citation.

8-9. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or to an alternative sentence or sanction including community service.

9-10. As used in this section:

- a. "Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. The term does not include any cigarette, cigar, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, any electronic smoking device, or any product regulated as a drug or device by the United States food and drug administration under chapter V of the Federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.].
- b. "Electronic smoking device" means any electronic product that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States food and drug administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].
- c. "Self-service display" means a display that contains cigarettes, cigarette papers, cigars, snuff, tobacco in any other form which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products and is located in an area that is openly accessible to the retailer's customers, and from which customers can readily access those products without the assistance of a salesperson. A display case that holds those products behind locked doors does not constitute a self-service display.
- d. "Tobacco specialty store" means a retail store that:
- (1) Derives at least seventy-five percent of its revenue from the sale of cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products; and

(2) Does not permit minors to enter the premises unless accompanied by a parent or legal guardian.

- e. "Vending machine" means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or other means of payment that is designed or used for vending purposes, including machines or devices that use remote control locking mechanisms.

SECTION 2. AMENDMENT. Section 12.1-31-03.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-03.1. Vending machines prohibited - Penalty.

1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a vending machine, except as provided in subsection 2.
2. Subsection 1 does not apply to:
 - a. A vending machine that is located in an area in which minors/individuals under twenty-one years of age are not permitted access; or
 - b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through the operation of a device that requires a salesperson to control the dispensation of such product.
3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through any vending machine, if those products are placed together with any nontobacco product, other than matches, in the vending machine.
4. As used in this section, "electronic smoking devices" and "alternative nicotine products" have the same meaning as in section 12.1-31-03.

SECTION 3. AMENDMENT. Section 12.1-31-03.3 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-03.3. Sale of flavored e-liquid to minors prohibited - Penalty.

1. A person may not sell, offer for sale, or distribute in this state any flavored e-liquid or electronic smoking device containing flavored e-liquid to a minor/an individual under twenty-one years of age.
2. A person that violates subsection 1 and is not a manufacturer is subject to a fine of five hundred dollars for each individual package of flavored e-liquid product or electronic smoking device containing flavored e-liquid sold or offered for sale.

SECTION 4. AMENDMENT. Section 51-32-01 of the North Dakota Century Code is amended and reenacted as follows:

51-32-01. Prohibited acts regarding sale of tobacco products, electronic smoking devices, or alternative nicotine products to minorsan individual under twenty-one years of age.

1. It is unlawful for any person in the business of selling tobacco products to take an order for a tobacco product, other than from a person who is in the business of selling tobacco products, through the mail or through any telecommunications means, including by telephone, facsimile, or the internet, if in providing for the sale or delivery of the product pursuant to the order, the person mails the product or ships the product by carrier, and the person fails to comply with each of the following procedures:
 - a. Before mailing or shipping the product, the person receives from the individual who places the order the following:
 - (1) A copy of a valid government-issued document that provides the name, address, and date of birth of the individual; and
 - (2) A signed statement from the individual providing a certification that the individual:
 - (a) Is a smoker of legal minimum purchase age in the state;
 - (b) Has selected an option on the statement as to whether the individual wants to receive mailings from a tobacco company; and
 - (c) Understands that providing false information may constitute a violation of law.
 - b. Before mailing or shipping the product, the person:
 - (1) Verifies the date of birth or age of the individual against a commercially available database; or
 - (2) Obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the individual placing the order.
 - c. Before mailing or shipping the product, the person provides to the prospective purchaser, by electronic mail or other means, a notice that meets the requirements of section 51-32-04.
 - d. In the case of an order for a product pursuant to an advertisement on the internet, the person receives payment by credit card, debit card, or check for the order before mailing or shipping the product.
 - e. (1) The person employs a method of mailing or shipping the product requiring that the individual purchasing the product:
 - (a) Be the addressee;
 - (b) Have an individual of legal minimum purchase age sign for delivery of the package; and
 - (c) If the individual appears to the carrier making the delivery to be under twenty-seven years of age, take delivery of the package only

after producing valid government-issued identification that bears a photograph of the individual, indicates that the individual is not under the legal age to purchase cigarettes, and indicates that the individual is not younger than the age indicated on the government-issued document.

- (2) The bill of lading clearly states the requirements in subdivision e and specifies that state law requires compliance with the requirements.
- f. The person notifies the carrier for the mailing or shipping, in writing, of the age of the addressee as indicated by the government-issued document.
2. It is unlawful for any person in the business of selling electronic smoking devices or alternative nicotine products to take an order for an electronic smoking device or alternative nicotine product, other than from a person who is in the business of selling electronic smoking devices or alternative nicotine products through the mail or through any telecommunications means, including by telephone, facsimile, or the internet, if in providing for the sale or delivery of the product pursuant to the order, the person mails the product or ships the product by carrier, and the person fails to comply with each of the following procedures:
- a. Before the sale of the electronic smoking device or alternative nicotine product verifies the purchaser is at least ~~eighteen~~twenty-one years of age through a commercially available database that is regularly used by business or governmental entities for the purpose of age and identity verification; and
- b. Uses a method of mailing, shipping, or delivery which requires an individual of legal minimum purchase age to sign for delivery before the electronic smoking device or alternative nicotine product is released to the purchaser.
3. As used in subsection 2, "electronic smoking devices" and "alternative nicotine products" have the same meaning as in section 12.1-31-03.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 31, 2021

Filed April 1, 2021

CHAPTER 109

HOUSE BILL NO. 1393

(Representatives Schneider, Boschee, Buffalo, Hanson, M. Johnson, Kading, Klemin)
(Senator Hogan)

AN ACT to amend and reenact subsection 1 of section 12.1-32-02 of the North Dakota Century Code, relating to sentencing alternatives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴³ **SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
 - a. Payment of the reasonable costs of the person's prosecution.
 - b. Probation.
 - c. A term of imprisonment, including intermittent imprisonment:
 - (1) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.
 - (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
 - (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based or faith-based programs.
 - (4) In the case of persons convicted of an offense who are under eighteen years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the department of corrections and rehabilitation.
 - d. A fine.
 - e. Restitution for damages resulting from the commission of the offense.
 - f. Restoration of damaged property or other appropriate work detail.
 - g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.

⁴³ Section 12.1-32-02 was also amended by section 1 of Senate Bill No. 2246, chapter 110.

- h. Commitment to a sexual offender treatment program.
- i. Completion of a restorative justice program. For purposes of this section, "restorative justice program" means a system of justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.

Except as provided by section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection does not permit the unconditional discharge of an offender following conviction. A sentence under subdivision e or f must be imposed in the manner provided in section 12.1-32-08. If the person is sentenced to a term of imprisonment, the court may prohibit the person from contacting the victim during the term of imprisonment. For purposes of this subsection, "victim" means victim as defined in section 12.1-34-01.

Approved April 12, 2021

Filed April 13, 2021

CHAPTER 110

SENATE BILL NO. 2246

(Senators Meyer, D. Larsen, Larson)
(Representatives Ista, Roers Jones, Schneider)

AN ACT to amend and reenact subsection 1 of section 12.1-32-02 and sections 19-03.1-23 and 39-08-01.5 of the North Dakota Century Code, relating to drug court and the creation of a veterans treatment docket.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴⁴ **SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
 - a. Payment of the reasonable costs of the person's prosecution.
 - b. Probation.
 - c. A term of imprisonment, including intermittent imprisonment:
 - (1) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.
 - (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
 - (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based or faith-based programs.
 - (4) In the case of persons convicted of an offense who are under eighteen years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the department of corrections and rehabilitation.
 - d. A fine.
 - e. Restitution for damages resulting from the commission of the offense.
 - f. Restoration of damaged property or other appropriate work detail.

⁴⁴ Section 12.1-32-02 was also amended by section 1 of House Bill No. 1393, chapter 109.

- g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.
- h. Commitment to a sexual offender treatment program.
- i. Drug court program. A drug court is a district court supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and substance use disorder treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug court programs.
- j. Veterans treatment docket. A veterans treatment docket is a district court supervised docket approved by the supreme court which combines judicial supervision with licensed treatment programs to treat substance use disorders, mental health conditions, behavioral health conditions, traumatic brain injuries, military sexual trauma and co-occurring disorders. The supreme court may adopt rules, including rules of procedure, for veterans treatment dockets.

Except as provided by section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection does not permit the unconditional discharge of an offender following conviction. A sentence under subdivision e or f must be imposed in the manner provided in section 12.1-32-08. If the person is sentenced to a term of imprisonment, the court may prohibit the person from contacting the victim during the term of imprisonment. For purposes of this subsection, "victim" means victim as defined in section 12.1-34-01.

⁴⁵ **SECTION 2. AMENDMENT.** Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts - Penalties.

1. Except as authorized by this chapter, it is unlawful for a person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but a person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. A person who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class B felony.
 - b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog is guilty of a class B felony.
 - c. A substance classified in schedule IV, is guilty of a class C felony.
 - d. A substance classified in schedule V, is guilty of a class A misdemeanor.

⁴⁵ Section 19-03.1-23 was also amended by section 5 of House Bill No. 1213, chapter 172, section 2 of Senate Bill No. 2264, chapter 176, and section 3 of Senate Bill No. 2283, chapter 175.

2. A prior misdemeanor conviction under subsection 7 or a prior conviction under subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under subsection 1.
3. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. A counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - c. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
4. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
5. Except for a prior conviction equivalent to a misdemeanor violation of subsection 7 or a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this title or a law of another state or the federal government which is equivalent to an offense with respect to the manufacture, delivery, or intent to deliver a controlled substance under this title committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsection 1. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
6. It is unlawful for a person to willfully, as defined in section 12.1-02-02:
 - a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or
 - b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.A person who violates this subsection is guilty of a class C felony.
7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless

the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.

- b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for the first offense under this subsection and a class C felony for a second or subsequent offense under this subsection.
- c. If, at the time of the offense the person is in or on the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves marijuana.
- d. A person who violates this subsection by possessing:
 - (1) Marijuana in an amount of less than one-half ounce [14.175 grams] is guilty of an infraction.
 - (2) At least one-half ounce [14.175 grams] but not more than 500 grams of marijuana is guilty of a class B misdemeanor.
 - (3) More than 500 grams of marijuana is guilty of a class A misdemeanor.
- e. If an individual is sentenced to the legal and physical custody of the department of corrections and rehabilitation under this subsection, the department may place the individual in a drug and alcohol treatment program designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the individual from imprisonment to begin any court-ordered period of probation.
- f. If the individual is not subject to any court-ordered probation, the court shall order the individual to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.
- g. Probation under this subsection may include placement in another facility, treatment program, ~~or drug court, or veterans treatment docket~~. If an individual is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.
- h. An individual incarcerated under this subsection as a result of a second probation revocation is not eligible for release from imprisonment upon the successful completion of treatment.
- i. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor.

8. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation.
9. If a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter. Once sealed, the court record may not be opened even by order of the court.
10. Upon successful completion of a drug court program or veterans treatment docket, a person who has been convicted of a felony under this section and sentenced to drug court or veterans treatment docket is deemed to have been convicted of a misdemeanor.
11. If a person convicted of a misdemeanor under this section is sentenced to drug court or veterans treatment docket and successfully completes a drug court program or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2.

SECTION 3. AMENDMENT. Section 39-08-01.5 of the North Dakota Century Code is amended and reenacted as follows:

39-08-01.5. Partial suspension of sentence for drug court program or veterans treatment docket completion.

1. Notwithstanding section 39-08-01, all but ten days of the minimum mandatory sentence required for a defendant charged with a third or subsequent violation of section 39-08-01 may be suspended on the condition the defendant successfully completes a drug court program or veterans treatment docket approved by the supreme court.
2. Upon successful completion of a drug court program or veterans treatment docket, a defendant convicted of a felony under section 39-08-01 and sentenced to drug court or veterans treatment docket is deemed to have been convicted of a misdemeanor.
3. If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to drug court or veterans treatment docket and successfully completes a drug court program or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2.
4. ~~For purposes of this section, unless the context otherwise requires, "drug court program" means a district court supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and chemical addiction treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug courts and the drug court program.~~

Approved March 31, 2021

Filed April 1, 2021

CHAPTER 111

SENATE BILL NO. 2204

(Senators J. Roers, Dwyer, Hogue)
(Representatives Klemin, Roers Jones)

AN ACT to amend and reenact subsection 6 of section 12.1-32-07 of the North Dakota Century Code, relating to the authority of district court judges to revoke and modify criminal sentences.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

6. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time ~~prior to~~before the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. ~~In the case of suspended execution of sentence, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.~~

Approved March 29, 2021

Filed March 30, 2021